FILE COPY

Office - Supreme Court, U. S.
FILED
APR 5 1950
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1949.

No. 669

REPUBLIC STEEL CORPORATION,
Petitioner,

v.

THE FARVAL CORPORATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

JOHN F. CHAMIZER,
909 Leader Bldg.,
Cleveland 14, Ohio,
Attorney for Respondent.

WILLIAM R. DAY,
Wyandotte, Michigan,
Of Counsel.

THE BYRD LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-4917

INDEX.

Supplemental Statement 1

As to Questions Presented..... 2

Argument 3

TABLE OF CASES.

Continental Paper Bag Co. v. Eastern Paper Bag Co., 210 U. S. 405..... 4

Faulkner, Todd C., v. John T. Gibbs (No. 19, Oct. Term, 1949) 3

Goodyear Tire & Rubber Co. v. Ray-O-Vac Co., 321 U. S. 275..... 4

Graver Tank & Mfg. Co. Inc., et al. v. The Linde Air Products Co., 337 U. S. 910..... 4

Schreiber-Schroth v. Cleveland Trust Co., 305 U. S. 47; 311 U. S. 211..... 2

In the Supreme Court of the United States

OCTOBER TERM, 1949.

No. 669

REPUBLIC STEEL CORPORATION,
Petitioner,

v.

THE FARVAL CORPORATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

SUPPLEMENTAL STATEMENT.

Of the two patents in suit, the "Kerns patent" (No. 1,961,051, R. 173-7) will expire May 29, 1951, and the "Dirkes patent" (No. 1,995,342, R. 179-23) will expire March 26, 1952.

Respondent's exploitation of lubricating systems and equipment embodying the patented inventions began, in effect, with its organization in 1932 (R. 355), or simultaneously with the beginning of the depression of the thirties. The remaining short period of patent protection left respondent will at the best afford it inadequate reward for its effort.

The defense of this suit has been paid for by the Blaw-Knox Company (R. 356), which is the real party in interest, rather than the nominal petitioner. The Blaw-Knox Company, for some years past, has made a studied effort to add to its numerous other lines lubricating equipment closely imitating that of respondent (Pltf. Exhs. 7-A-B-C-D and 8-A-B-C, R. 189-202).

Although the present action was begun on March 6, 1946 it did not proceed to final disposition in the District Court until November 15, 1948 (R. 1), reference to a Special Master* having been made to accommodate petitioner's counsel (R. 12).

Following extended hearings before the Special Master, the latter rendered an unusually full and complete report (R. 353-391) including detailed findings of fact and conclusions of law (R. 363-9).

The objections of petitioner (defendant), under six general headings and some thirty sub-headings (R. 391-7), were briefed and argued orally before the District Court, whose memorandum opinion (R. 397-406) meticulously considered such objections, overruled them, and entered final judgment for respondent (R. 406).

Finding nothing clearly erroneous in the record thus presented, the Court of Appeals for the Sixth Circuit rendered its judgment (R. 421) under date of December 16, 1949, affirming the judgment of the District Court.

Thus, in effect, three tribunals, rather than the usual two, have considered the issues involved in the present action and have concurred in holding the patents in suit valid and infringed.

AS TO QUESTIONS PRESENTED.

While differently phrased, the questions presented (Petition p. 7) raise nothing which was not urged in succession (1) before the Special Master, (2) in the numerous detailed objections (R. 391-7) to the latter's report when before the District Court, and (3) in the "Statement of Questions Involved," submitted on petitioner's unsuccessful appeal to the Court of Appeals, as required by its rules.

---

* Hon. William B. Woods, whose report as Special Master was confirmed in *Schreiber-Schroth v. Cleveland Trust Co.*, 305 U. S. 47; 311 U. S. 211.

Furthermore, despite the form in which they are stated, the questions here presented raise questions of fact, as to which the adverse findings of the Special Master were approved and adopted by the District Court (R. 406), and upon review were accepted by the Court of Appeals (R. 422).

ARGUMENT.

As in the recently decided case of *Todd C. Faulkner v. John T. Gibbs* (No. 19, Oct. Term, 1949), so here petitioner in its supporting brief seeks to create the illusion of conflict with other decisions of this Court and, more particularly, with several Court of Appeals' decisions, without noting the entirely different factual situations on which the cited decisions were based.

The several errors specified in petitioner's brief (pp. 11-12) are simply non-existent in the light of the facts as thus found by concurring decisions of the tribunals below. Accordingly, the several cases cited by petitioner in support of its contentions are not pertinent to the facts of the case.

Thus, in emphasizing questions in the "second area" set up by petitioner, the latter ignores that the Courts below did not hold that a stranger to a Patent Office interference could not attack the judgment there rendered, but they did find that petitioner had not sustained the burden "to establish by evidence that the Patent Office decision * * * was not in accordance with the facts." (Dist. Ct. Op., R. 402.)

As this Court again stated in the *Faulkner Case* (*supra*):

> "We will not disturb the concurrent findings upon the issues presented to us in the petition for certiorari. We are not persuaded that the findings are shown to be clearly erroneous."

For earlier rulings to the same effect, see also: *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405, 416:

> "The lower courts, therefore, found that the invention was a broad one, and that the machine used by the Continental Company was an infringement. And these were questions of fact upon which, both of the courts concurring, their findings will not be disturbed unless clearly wrong. Deslions v. La Compagnie Generale Transatlantique, 210 U. S. 95."

Goodyear Tire & Rubber Co. v. Ray-O-Vac Co., 321 U. S. 275, 278:

> "The Circuit Court of Appeals reexamined the findings in the light of the evidence and accepted them. It must be a strong case in which this court will set aside these concurrent findings of two courts." (Citing *Williams Mfg. Co. v. United Shoe Machinery Co.*, 316 U. S. 364, 367.)

Graver Tank & Mfg. Co. Inc., et al. v. The Linde Air Products Co., 337 U. S. 910:

> "A court of law, such as this Court is, rather than a court for the correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error. Goodyear Tire & Rubber Co. v. Ray-O-Vac Co., 321 U. S. 275; District of Columbia v. Pace, 320 U. S. 698; William Shoe Machinery Co. v. United Shoe Machinery Corp., 316 U. S. 364; Baker v. Schofield, 243 U. S. 114, 118."
>
> "No such showing is made."

We submit the petition for a writ of certiorari should be denied.

Respectfully,

JOHN F. OBERLIN,
909 Leader Bldg.,
Cleveland 14, Ohio,
Attorney for Respondent.

WILLIAM R. DAY,
Wyandotte, Michigan,
Of Counsel.

March 31, 1950.